84TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
2d Session } { No. 1834

MR. AND MRS. CHARLES H. PAGE

FEBRUARY 28, 1956.—Committed to the Committee of the Whole House and ordered to be printed

Mr. LANE, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H. R. 7074]

The Committee on the Judiciary, to whom was referred the bill (H. R. 7074) having considered the same, report favorably thereon with amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Page 1, line 6, strike out "$25,000" and insert "$14,430.88".

PURPOSE

The purpose of the proposed legislation is to pay Mr. and Mrs. Charles H. Page, of Jacksonville, Fla., the sum of $14,430.88 in full satisfaction of all claims against the United States for compensation for the death of their son, Charles H. Page, Jr., who was fatally shot on the night of July 4, 1954, while on duty as a member of an Army motorized patrol at Killeen Army Base, Killeen, Tex., and for medical and other expenses incurred by Mr. and Mrs. Page as the result of their son's death.

STATEMENT

Charles H. Page, Jr., was inducted into the Army on September 17, 1953. After completing basic training he was sent to Camp Gordon, Ga., for military police training, and on February 6, 1954, he was assigned to the Military Police Co., 8455th Area Administrative Unit, Killeen Base, Killeen, Tex.

On July 4, 1954, Pfc. Charles H. Page, Jr., was performing duty as a member of a motorized patrol at Killeen Base. The patrol was challenged by a sentry about 9:30 p. m. in a classified area. Despite the fact that the same vehicle and its occupants had passed this sentry twice previously on that night and had been identified by verbal identification, on this occasion the sentry decided to enforce a strict chal-

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lenge as to the identity of the persons in the patrol vehicle. He sought to have Private First Class Page and the other occupants of the vehicle revert to strict identification procedure which involved Private Page's getting out of the vehicle to be recognized. When Private Page did not comply the sentry fired his rifle fatally wounding Private Page. It is clear that this extreme measure could not have been reasonably anticipated by the members of the patrol since it was such a radical departure from the previous informality of identification followed by the sentry the same evening.

The sentry was subsequently found guilty of unlawfully killing Private First Class Page in violation of article 134 of the Uniform Code of Military Justice. The facts of the occurrence and of the conviction of the sentry are more fully set forth in the report of the Department of the Army which has been appended to this report.

The report of the Department of the Army discloses that Mr. and Mrs. Page have received $569.22 in death gratuity benefits from the Government as the result of their son's death. Further the Government has provided Mr. and Mrs. Page with $10,000 free servicemen's indemnity which is being paid them in monthly installments over a 10-year period. The Army report contains an extensive analysis of the decisions of the courts of Texas concerning wrongful death actions, and concludes that though the figure of $25,000 originally carried by this bill as the amount to be paid while somewhat higher than the average recovery is not a sufficient departure to warrant an objection on the part of the Army. However the cases do demonstrate that the courts of Texas do take into consideration previous recoveries by injured parties in fixing the amount of a recovery. Therefore the Army has recommended that the compensation provided for in the bill be reduced by $10,569.22, and indicates that it will not have any objection to the enactment of the bill if it is amended to provide for any award to Mr. and Mrs. Page in the amount of $14,430.88.

The committee has carefully considered the facts presented by Mr. Page's statement and the Army report. After a careful consideration of the cases reviewed in the Army report, the committee concludes that the amounts of the servicemen's indemnity and the death gratuity should be deducted from the amount originally carried by the bill. Therefore the committee recommends that the bill be amended to provide for the payment of $14,430.88 to Mr. and Mrs. Page, and that the bill so amended be favorably considered.

DEPARTMENT OF THE ARMY,
Washington 25, D. C., February 2, 1956.

Hon. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives.

DEAR MR. CHAIRMAN: Reference is made to your letter enclosing a copy of H. R. 7074, 84th Congress, a bill for the relief of Mr. and Mrs. Charles H. Page, and requesting a report on the merits of the bill.

This bill provides as follows:

"That the Secretary of the Treasury is authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to Mr. and Mrs. Charles H. Page, of Jacksonville, Florida, the sum of $25,000. Such sum shall be in full satisfaction of the claims of the said Mr. and Mrs. Charles H. Page against the United States for compensation for the death of their son, Charles H. Page, Junior, who was fatally shot on the night of July 4, 1954, while on duty as a member of a motorized patrol at Killeen Army Base, Killeen, Texas, while serving as a

member of the United States Army, and for medical and other expenses incurred by the said Mr. and Mrs. Charles H. Page as a result of the death of their son".

The Department of the Army would interpose no objection to the above-mentioned bill if it were amended as hereinafter recommended.

Records of the Department of the Army show that Charles Harby Page, Jr. (referred to in H. R. 7074 as Charles H. Page, Junior), was born on February 3, 1935, in Arcadia, Fla. He was inducted into the Army of the United States on September 17, 1953, and after completing basic training at Fort Jackson, S. C., and military police training at Camp Gordon, Ga., on February 6, 1954, was assigned to the Military Police Co., 8455th Area Administrative Unit, Killeen Base, Killeen, Tex. He was a member of this organization until his death on July 4, 1954.

On July 4, 1954, Private First Class Page was performing duty as a member of a motorized patrol at Killeen Base. At about 9:30 p. m. this patrol was challenged by a walking sentry posted at a pillbox in a classified area. The vehicle was halted by the sentry substantially in accordance with prescribed challenging procedures and Private First Class Page properly called out the patrol number in response to the sentry's challenge. The sentry then instructed that the dome light of the vehicle be turned on and Private First Class Page replied that it did not work. Further, in substantial conformity with the correct challenging procedure, Page was ordered to dismount from the vehicle and be recognized. He refused, asked the sentry if he didn't recognize his voice and instructed the driver to move the vehicle forward. The sentry ordered the vehicle to halt and then fired, fatally wounding Page, who was seated opposite the driver on the right side of the vehicle. He was pronounced dead on arrival at the United States Army hospital, Fort Hood, Tex., at 10 p. m., the same night.

Following the incident, an investigation was conducted by the military authorities to determine the line-of-duty status of Private First Class Page at the time of his death. In this investigation it was revealed that the motorized patrol of which Page was a member twice previously that same night after the fall of darkness had passed the same sentry post where the same guard was on duty; and after being halted, giving verbal identification, and stating that the dome light did not work, had been allowed to proceed without further recognition procedures. The decision of the sentry to enforce a strict challenge, to the point of actual gunfire, on the next passage of the patrol could not have been reasonably anticipated by the members of the patrol. This evidence caused the authorities to conclude that Page's death was not due to his own misconduct, inasmuch as his refusal to dismount, under the circumstances, constituted only simple negligence rather than willful misconduct, which is the required basis for a finding of "not in line of duty—due to his own misconduct."

The sentry who fired the shot was subsequently charged with murder in violation of article 118 of the Uniform Code of Military Justice and was found guilty of unlawfully killing Page by negligently shooting him with a rifle, a violation of article 134. He was sentenced on September 18, 1954, to be discharged from the service with a bad-conduct discharge, to forfeit all pay and allowances, and to be confined at hard labor for 1 year.

The parents of Private First Class Page have no remedy under the Federal Tort Claims Act (60 Stat. 846; 28 U. S. C. 943), as revised and codified by the act of June 25, 1948 (62 Stat. 984; 28 U. S. C. 2680 (h)), inasmuch as there is no jurisdiction conferred by that act on the courts to adjudicate any claim against the United States arising out of an assault and battery. See *Stepp* v. *United States* (207 F. 2d 909 (4th Cir. 1953), cert. denied, 347 U. S. 933 (1954)), where the court held that the use of excessive force by a sentry in shooting a person who failed to obey his command was an assault and battery and thus no recovery could be allowed under the Federal Tort Claims Act.

The Department of the Army has no objection to a grant of compensation to Mr. and Mrs. Page for the death of their son due to the wrongful act of the United States Army sentry. However, it is the opinion of this Department that the compensation should not exceed that which would be given under the law of Texas, the place where the incident occurred.

Vernon's Texas Civil Statutes, title 13A, article 4671, provides in pertinent part as follows:

"When an injury causing the death of any person is caused by the wrongful act, neglect, carelessness, unskilfulness, or default of another person, * * * his, * * * agents or servants, such persons, * * * shall be liable in damages for the injuries causing such death. * * * ."

Article 4672 of the same title provides:

"The wrongful act, negligence, carelessness, unskillfulness, or default mentioned, in the preceding article must be of such character as would, if death had not ensued, have entitled the party injured to maintain an action for such injury."

Under these provisions, an employer is liable for the willful and intentional acts of his servant acting within the scope of his employment (*St. Louis Southwestern Ry. Co.* v. *Hudson*, 17 S. W. 2d 793 (Com. App. Tex. 1929)). The use of excessive force by an employee in intentionally shooting another while protecting his employer's property is such an intentional wrong (*Smith* v. *Jungkind*, 252 S. W. 2d 596 (Ct. Civ. App. Tex. 1952)); and contributory negligence on the part of the injured person is not a defense to an intentional wrong (*Moore* v. *El Paso Chamber of Commerce*, 220 S. W. 2d 327 (Ct. Civ. App. Tex. 1949)). Applying the Texas law to the facts of the Page case, the United States Government, if it were a private citizen, would be liable for damages for the death of Private First Class Page caused through the use of excessive force by the sentry acting within the scope of his employment. While there is no suggestion of malice or evil motive on the part of the sentry, he did intentionally discharge his weapon intending to hit the occupants of the Army vehicle, and this, in itself, is sufficient to establish the act as an intentional, rather than a negligent wrong. Consequently, the contributory negligence of the deceased in failing to observe the proper challenging procedure would not bar recovery for his death.

Vernon's Texas Civil Statutes, title 13A, article 4677, provides in pertinent part as follows:

"The jury may give such damages as they think proportionate to the injury resulting from such death. * * *."

The courts have stated that the jury may consider the following elements in awarding damages under the aforementioned provision to parents for the wrongful death of their minor child:

"* * * the loss of service * * * contributions, * * * of the deceased during his minority, less the cost and expense * * * for the care, maintenance and education [of the deceased] * * * and if * * * [the parents] had a reasonable expectation of receiving from [the deceased] * * * had he lived, considering his position and ability * * * contributions and benefits * * * after he had reached his majority * * *" (*Anderson* v. *Broome*, 233 S. W. 2d 901 (Ct. Civ. App. Tex 1950)).

But the court in the same case cautioned the jury—

"You cannot allow * * * anything for grief * * * sorrow * * * loss of companionship * * * loss of society, * * * or affection."

In *Anderson* v. *Broome*, supra, the court held that an award of $5,000 for the death of a son, almost 20 years of age, who expected to be discharged from the Army soon, had sent home $50 per month while in the service, was a skilled farmer and intended to purchase the farm adjoining his aging father's and go into partnership with him, was not excessive.

Private First Class Page was a young man, 19 years of age, and a high-school graduate, with slightly more than 1 year to serve in the Army. There is no record that he had been in the practice of sending any money home prior to the time of his death and inasmuch as he would have remained in the Army until 6 months before his 21st birthday, it would appear doubtful whether his parents would have incurred any appreciable expense for his care and maintenance or received any substantial benefit from him until he reached his majority. Thus, any award to Mr. and Mrs. Page should constitute the present worth of the contributions they could expect reasonably to receive from their son after he reached the age of 21. The sum total of such contributions in all probablity would rest upon many variables such as the financial station in life which Private First Class Page managed to achieve, the financial needs of his parents which might subsequently develop and, ultimately, his sense of duty and obligation to his parents. It is obvious that only by the sheerest conjecture can one arrive at a definite amount of compensation which would be equitable in a case of this nature. For this reason a further examination of the awards which juries have made to parents under Texas law for the wrongful deaths of their minor children is advisable to furnish some guide for the determination to be made in this case.

In *Groendyke Transport Co.* v. *Dye* (259 S. W. 2d 747 (Ct. Civ. App. Tex. 1953)), an award of $7,487 for the death of a 17-year-old son who planned to take charge of his father's farm and share the profits with him was held to be not unreasonable. The Court of Civil Appeals of Texas in *Sharpe* v. *Munoz* (256 S. W. 2d 890 (1953)), refused to reduce a jury award of $15,000 for the loss of a 12-month-old child. See also *J. Weingarten, Inc.* v. *Sanchez* (228 S. W. 2d 303 (Ct. Civ. App. Tex. 1950)), in which the court admitted that an award of $15,208 to a crippled father

and 46-year-old mother for the death of their 14-year-old son was high, but refused to order a reduction. On the basis of the Weingarten case, supra, the court in *Texas & New Orleans R. R. Co.* v. *Hanson* (271 S. W. 2d 309 (1954)), ordered the reduction of a verdict of $26,000 for the death of a 12-year-old boy to $16,000, as that represented the highest amount which had been given in Texas for the death of a child of such an age.

The award proposed in this bill, although higher than that given in any of the cases cited, does not represent such a departure from the aforementioned cases as to warrant the Department of the Army's objection, if it should be enacted by the Congress. However, the Court of Civil Appeals of Texas in the case of *Missouri-Kansas-Texas Ry. Co.* v. *McLain* (74 S. W. 2d 166 (1934)), held that it was proper for the trial court to deduct $2,000 from the jury verdict of $12,000 because the plaintiff had received that amount for the release of a third party, not a joint tort-feasor. The court reasoned that, inasmuch as the jury had determined that $12,000 would compensate the injured party properly, only $10,000 in addition to the $2,000 already received was necessary to make him whole. Inasmuch as the United States Government has already provided Mr. and Mrs. Page with $10,000 free servicemen's indemnity, which is being paid in monthly installments over a 10-year period, and $569.22 in death gratuity benefits, it is recommended that the compensation provided for in the bill be reduced by these amounts.

Although Vernon's Texas Civil Statutes, title 13A, article 4673, provides for exemplary damages in the case of a death caused by a willful act or gross negligence, it is the opinion of this Department that the United States should not pay damages of a punitive rather than a compensatory nature. This is in accord with the policy evidenced in the Federal Tort Claims Act, supra (28 U. S. C. 2674), which states that the United States shall not be liable for punitive damages, but, if the law of the place where the act causing a wrongful death occurred provides only for punitive damages, then the United States shall be liable for actual or compensatory damages, measured by the pecuniary injuries resulting from the death to the persons for whose benefit the action is brought.

For the foregoing reasons the Department of the Army has no objection to the enactment of this bill if it should be amended to provide for an award to Mr. and Mrs. Page in an amount not to exceed $14,430.88.

The cost of this bill, if amended, would be $14,430.88.

The Bureau of the Budget advises that there is no objection to the submission of this report.

Sincerely yours,

WILBER M. BRUCKER,
Secretary of the Army.

GENTLEMEN: After confering with Congressman Bennett and Senator Smathers there seems only one last alternative of receiving recognition of my son's death while in the armed service for which they have agreed to lend all aid within their powers to obtain justice. I am asking for this recognition due to the fact that I feel that I can prove by testimony given during the trial and also testimony that I have obtained through investigation and personal friends of my son which should be carefully weighed and considered before a decision is made concerning this horrible incident.

Gentlemen, you will find by recorded testimony that this party was found guilty of careless neglect manslaughter by general court-martial, the original charges of unpremeditated murder, which I felt was a just charge. I intend in no way to interfere with the Government's procedures or their findings but, gentlemen, I do think there was a motive for this incident.

If allowed, I would like to make reference to 2 or 3 specific statements made by the accused prior to and after the incident occurred:

1. Pvt. Michel J. Selecky, on or about the 3d of July 1954 stated openly to a Sergeant Winn and a Corporal Lape that he certainly intended to fire his gun off tomorrow night and help celebrate the Fourth of July. This goes to prove that the party had prior thoughts by stating his thoughts in the presence of two military associates and supposing to know the rules and regulations of discharging firearms on this Government post. It goes to prove that he had thought of it, that he had thought of firing a gun and was so bold as to make these statements in front of two men who should have, knowing of his past record, suggested to his superiors that he would stand observation and not let a statement of this style be passed up as casual conversation.

Also, gentlemen, a second citation; Michel J. Selecky had been reported some numerous number of times prior to this incidence for various deeds executed in defiance of his orders and regulations for which 2 or 3 of these incidences necessitated a court-martial hearing. The records will show that he was prosecuted for two of these deeds, serving time for same and also fined in certain amounts of moneys to take care of some of the damages incurred in these incidents. Gentlemen, I am trying to bring out the point that leaves no doubt in my mind that the Government's Army supervisory and personnel are absolutely responsible for my son's death due to careless and neglect supervision of making close observations and scrutiny of their personnel who are executing these various security patrols.

Gentlemen, if I had a man working for me in my organization who had had a previous record as Michel J. Selecky, I probably would have him transferred in another department or had him surveyed out. I would be skeptical about leaving him in a security position as he was supposed to execute due to the references concerning his record made above. This man in my opinion was a risk. He had carelessly and neglectedly gotten by with previous detrimental acts which were classified at that time probably as minor and felt that he could continue.

Gentlemen, you are well aware that it led to the murder of my son for which he had no earthly reason to do so. He did not even execute the correct status of recognition to begin with.

Testimony of witnesses and also testimony of Private Wright, driver of the vehicle, will prove that they had been recognized, so they understood, at the first time they had been commanded to halt some 30 yards from Selecky's post and certainly, gentlemen, 2 men knowing the rules and regulations and the drastic outcome of not being recognized would not have moved forward unless they understood that recognition was a fact. You will also find in the testimony, gentlemen, that Private Wright testified that he saw Selecky pull the bolt of his gun and insert a shell therein from the lights of the car as they moved forward from their first recognition point and the only reason that they stopped opposite Selecky's post was because he was pointing a gun at them, looking kind of wild. Now, gentlemen, at the first post my son had called out "Patrol No. 11" by which Selecky has passed recognition all evening and upon stopping at said post and standing within 8 feet of motorized vehicle he called out my son's name and said, "Page, get out of the truck and walk around in the light so I can identify you." My son called back and stated, "Aw, go to hell, Selecky, I am tired and don't want to get out. You recognized my voice anyway" and Selecky called back calling my son's name again which goes to prove that he knew one of his comrades in that truck and said, "Page, get out of that truck or I will shoot you," upon which I feel that my son's intentions were to adhere to his second command and would have executed same had he been allowed time to do so; which you will find, gentlemen, by testimony that from Selecky's second statement requesting my son to dismount from the truck, these witnesses testified that it would have been physically impossible for him to have dismounted as requested because there was only an elapse of about 1 second after his second command that he openly fired. Gentlemen, this goes to prove that this man was either mentally affected or had intentionally fired his gun on this night because of his previous statements made the day before and probably found this his most opportunative time to do so.

There is also a fact shown that his first thoughts were to obtain two witnesses for which you will find detailed in the testimony. I still contend that this caliber of man should not have been executing a sentry post especially with access to a weapon.

There is further information, gentlemen, concerning Private Selecky's temperament that at several various times he tried to simulate the acting of noted film star, James Cagney, and he publicly demonstrated his liking for the tough manner in which actor Cagney is most popular. Also a sworn testimony referred to that he had inserted a shell into the barrel of his rifle which is against regulations, in my understanding, except in absolute defense of his sentry post. Also, gentlemen, in Selecky's testimony he stated that he shouted to the truck occupant to halt for which you will find no substantial testimony by other witnesses, also there is testimony proving that he had been told that there was a motorized vehicle approaching. Private Selecky also testified that he fired on the truck to stop it for which he was lying because the truck was proven to be standing still and in some 8 feet of Selecky because testimony shows that he had made 2 statements to my son showing specific recognition and had not justifiable cause to fire.

Selecky's only defense was the fact that he was executing orders for which there is no background. Gentlemen, there is one other reference to me which seems of great importance and for which I think if the Army would recognize there could be

some clarification of some of their testimony after my son was shot, he lay on the ground some 10 minutes before a sergeant from headquarters arrived on the scene, everyone was running around excited, acting like they were crazy and upon arrival of said sergeant the men were requested to tear up his clothes and make tourniquets, this goes to show, gentlemen, also by testimony, that my son was still alive and could have had a possible chance of life had there been action by a group of men intelligent and having been taught what to do in cases of emergency. There was a motorized vehicle standing by with the motor running and ample men to have removed him for the sake of saving his life but he was left without being touched for some 10 minutes longer until an ambulance appeared in sight and removed him. Further testimony of life and the probability of saving my son's life was brought out in testimony that Selecky was kneeling down over him asking him not to breathe so hard.

Gentlemen, I will never conceive in my heart and soul that this was a justifiable act. I think there is more information relative to this case than has been brought out.

This incident has broken up a three-love triangle very, very closely related throughout life. It has created great physical damage to myself and my son's mother. This act being such an uncalled for physical shock has necessitated my son's mother to be under continual medical care and has created an untold amount of expense and there is no way to determine by medical at this time as to how long and how prelongated and how serious this medical care to my son's mother will be. I don't feel that this incident was brought forth either by my family or my son. I think that this was an unpremeditated murder inflicted by a careless, neglectful, irresponsible party who, in collaboration with his bad record, was still allowed by the United States Government to execute a sentry patrol.

Respectfully,

CHAS. H. PAGE, Sr.

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